IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10168 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESH CHANDUBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10168 of 2001

MS SADHANA SAGAR for Petitioner No. 1

MR MUKESH PATEL A.G.P. for Respondent No. 1

MR MANISH J PATEL for Respondent No. 2

..... for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 15/03/2004

ORAL JUDGEMENT

The petitioner was appointed on 14th May, 1990 as

part time Peon in the office of respondent no. 3. Initially, he was required to work for four hours in a day, but later on, the same was increased to seven hours in a day. He wrote a letter on 16th March, 1996 to the concerned authority, requesting for regularization of his service. In June, 2001, respondent no. 3 also wrote a letter to respondent no. 2, recommending the case of the petitioner for regularization of his service. It appears that the said recommendation was not considered for long time, hence, the petitioner approached this Court by filing this petition.

1.1. This Court (Coram : H.K. Rathod, J.) vide order dated 29th November, 2001, passed an order directing respondent no. 2 to consider the case of the petitioner in view of the recommendation made by respondent no. 3 for absorption of the petitioner as full time employee on the basis of Circulars dated 26th December, 1980, 15th October, 1992 and 15th February, 1999 issued by the Government and to pass appropriate order in accordance with law within two months from the date of receipt of the writ of this order. It appears that then the petitioner made representation on this line. The said representation was rejected by respondent no.2 and the same was communicated to respondent no. 3 by letter dated 10th December, 2001. Respondent no.3 duly intimated the petitioner by letter dated 18th December, 2001 regarding the decision of respondent no.2. From the said communication, it appears that the decision for not regularizing the service of the petitioner was taken on the basis that his appointment was made on 14th May, 1990 and was on temporary basis which could be terminated without assigning any reason by the District Development Officer i.e. respondent no.2. For that reason, the petitioner's request for absorption on the post of peon made in view of the Circular dated 26th December, 1980 could not be granted. The petitioner, therefore, filed note requesting permission for revival of the petition which was duly granted in view of the order passed by this Court on 29th November, 2001.

1.2. The petitioner's grievance is that he has been all throughout working on part time basis rendering about seven hours service in a day and, therefore, his service was required to be regularized.

2. As against that, no affidavit has been filed by the other side and the averments made in the petition remain uncontroverted.

3. The question regarding regularization of service

on temporary or part time employee who has put in number of years of service has been considered and decided by this Court in Special Civil Application No. 8917 of 1998 and its cognate matters by judgment dated 17th February, 2004. In view of the said judgment, this petition deserves to be allowed with the following directions :-

The respondents are, therefore, now required to be directed that irrespective of the Circular of 21st August, 1995, they shall consider the case of the petitioner for appointment on permanent post in Class-IV and if the permanent posts are found vacant, he shall be appointed on the same in accordance with his claim, in the matter of seniority and the Regulations and if otherwise, he is not ineligible. Appointment should not be denied on the ground of overage or on the ground that it may amount to giving a back-door entry. This exercise is to be carried out as early as possible but in any case not later than 30th May, 2004. If need be, the petitioner will make appropriate representation, which will be considered in light of this judgment and in particular, the direction given therein.

The petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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